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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,977	06/27/2005	Tomohiko Taniguchi	2005_0955A	9267
52349	7590	12/10/2008	EXAMINER	
WENDEROTH, LIND & PONACK L.L.P.			FAULK, DEVONA E	
2033 K. STREET, NW				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20006			2614	
			MAIL DATE	DELIVERY MODE
			12/10/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/540,977	TANIGUCHI, TOMOHIKO	
	<b>Examiner</b>	<b>Art Unit</b>	
	DEVONA E. FAULK	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16-18 and 21-33 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 21-24,32 and 33 is/are allowed.  
 6) Claim(s) 16-18 and 25-31 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 May 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Response to Remarks***

1. Claims 30-33 were indicated as allowable subject matter in the previous office action. The applicant has amended the claims to include the allowable subject matter.
2. However, claims 16-18,25-31 now have to be rejected under 101 (See 101 rejection below).
3. Claims 1-15,19-20 are cancelled.

### ***Claim Rejections - 35 USC § 101***

Claim(s) 16-18,25-31 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled “Clarification of ‘Processes’ under 35 U.S.C. 101”). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

### ***Allowable Subject Matter***

4. Claims 21-24,32,33 are allowed.

The following is an examiner's statement of reasons for allowance: Regarding claims 21 and 23, prior art Dobbs discloses Regarding claim 21, Dobbs discloses a device for setting an audio output level (Figure 1) comprising:

a storage unit operable to store a plurality of thresholds associated with clock time information preliminarily (memory, Figure 1; column 3, lines 43-48 teaches of inputting a data set into memory, the data set comprising an activating time of day and stored variable attenuation parameters; column 2, lines 45-column 3, line15; column 8, line 63- column 9, line 65);

a selecting unit operable to select one of the plurality of thresholds corresponding to a current clock time (rotary encoder 16, Figure 1; column 7,line 48-column 8, line 16; step 206, column 7, lines 65-column 8, line 6, the user selects an equalization profile associated with an audio source, the equalization profile having an associated time of day and implicitly a threshold);

and a requesting unit operable to request an acknowledgment that a setting of the audio output level is to be changed (rotary encoder 16; column 8, lines 24-28 teaches that the user can rotate the rotary encoder 16, which provides the user with the option of choosing yes or not to decide if he or she wishes to redo or change an equalization settings)

and allocating a function of replying to the acknowledgement for a certain period of time immediately after requesting the acknowledgement to an operation button and that the operation button is on at least one of a remote control and a main unit (column 8, lines 24-28; rotary encoder 16 is pushed to acknowledge

yes when the user wants to make changes; Dobbs teaches that user input can be provided by rotary encoder 16 or IR transmitter (18) which reads on remote column 4, lines 34-36)column 8, lines 8-25; rotary encoder is pushed).

Prior art Elliot discloses modifying the setting when the setting exceeds a threshold (column 2, lines 10-19). Prior art Chaudhri discloses ending the setting of the audio output level after the certain period of time expires, if a reply via the operation button is not received (column 7, lines 38-43).

The prior art or combination thereof fails to disclose or make obvious "a setting unit operable to set the audio output level to the setting that exceeds the selected threshold, if the reply via the operation button is received, and set the audio output level to the selected threshold , if a reply via the operation button is not received by expiration of the certain time period.

Claims 22,24,32 and 33 are allowed due to dependency on claims 21 and 23.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEVONA E. FAULK whose telephone number is (571)272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devona E. Faulk/  
Examiner, Art Unit 2614